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v. *Sweeney*, 84 Cal. 100, 23 Pac. 1117. Furthermore, a recent tendency of equity jurisdiction is to permit decrees to operate even affirmatively in another state, whenever the substantial rights of the parties so require. *Rickey Land & Cattle Co.* v. *Miller*, 218 U. S. 258, 31 Sup. Ct. 11; *California Development Co.* v. *New Liverpool Salt Co.*, 172 Fed. 792. Where the local court can render an effective decree, it is submitted that the rule in question should be no bar to granting the relief. *State ex rel. Watkins* v. *North American, etc. Co., supra.*

CRIMINAL LAW — ATTEMPT — JURISDICTION. — A New Jersey statute made it a crime to advise another to register illegally as a voter. The accused, a resident of New Jersey, wrote a letter to a resident of Pennsylvania, advising him to register illegally as a voter in New Jersey. This letter was never received. Upon an indictment in New Jersey for the statutory crime, the jury found the defendant guilty of an attempt. *Held*, that the conviction should be set aside. *State* v. *Stow*, 84 Atl. 1063 (N. J.).

The criminal act aimed at by the statute is the communication of the advice. *Cf. Lindsay* v. *State*, 38 Oh. St. 507; *Foute* v. *State*, 15 Lea (Tenn.) 712; *Mills* v. *State*, 18 Neb. 575, 26 N. W. 354. But considering the serious character of the crime attempted, that part of the act in the jurisdiction of New Jersey, *i. e.*, mailing the letter, would seem to be sufficiently near to completion to be punishable as an attempt. But it is necessary that the physical act contemplated by the defendant should be a crime; for the attempt is only a wrong to the state because of its connection in the actor's mind with some actual crime. See *Regina* v. *McPherson*, Dears. & B. 197, 201. It has been held that this crime may be one against an adjoining state, at least if the act contemplated is criminal in both jurisdictions, perhaps because the attempt may otherwise escape punishment. *King* v. *Krause*, 18 T. L. R. 238. See *State* v. *Terry*, 109 Mo. 601, 622, 19 S. W. 206, 212; 15 HARV. L. REV. 672; 16 HARV. L. REV. 491, 507. In the principal case, however, the act contemplated is that of advising a man in Pennsylvania to register illegally in New Jersey, which is not a crime by any law.

CRIMINAL LAW — SPECIFIC INTENT — ASSAULT WITH INTENT TO KILL. — The defendant shot at A. with the intention of killing him, but accidentally hit and wounded B. He was indicted for assault with intent to kill B. under a statute which made criminal an assault with intent to kill. *Held*, that the defendant may be convicted under the indictment. *State* v. *Gallagher*, 85 Atl. 207 (N. J.).

The unintentional killing of one person in the attempt to kill another is murder. The requisite mental element, malice aforethought, exists in the general felonious intent. *Gore's Case*, 9 Co. 81 *a*. But when by statute specific intent is made a part of a crime, that particular intent must be proved. *State* v. *Taylor*, 70 Vt. 1, 39 Atl. 447; *Simpson* v. *State*, 59 Ala. 1. Thus a person intending to shoot A. but accidentally shooting B. cannot properly be convicted of assault upon B. with intent to kill him. *People* v. *Keefer*, 18 Cal. 636; *State* v. *Mulhall*, 199 Mo. 202, 97 S. W. 583. *Contra, Callahan* v. *State*, 21 Oh. St. 306. But in such case he may properly be convicted of assault upon B. with intent to kill, for an intent to kill anyone is then obviously sufficient. *State* v. *Thomas*, 127 La. 576, 53 So. 868. See *Mathis* v. *State*, 39 Tex. Cr. App. 549, 47 S. W. 464. Cases where A. shoots at B. supposing him to be C. should also be distinguished, for there is a specific intent to kill the man shot at. *Regina* v. *Smith*, Dears. C. C. 559; *McGehee* v. *State*, 62 Miss. 772. A proper indictment would have been possible under the statute in the principal case which requires only an intent to kill. N. J. P. L. 1906, p. 430; *State* v. *Thomas, supra.* Where the indictment goes beyond the statute in requiring an intent to kill the person hit, the weight of authority holds that such must be proved. *State* v. *Shanley*,

20 S. D. 18, 104 N. W. 522. *Contra*, *Walker* v. *State*, 8 Ind. 290. But a different result in New Jersey may be based on the criminal procedure statute which allows reversal only when the defect in form substantially prejudices the defendant in maintaining his defense. N. J. CRIM. PROC. ACT, 1898, § 163.

DEEDS — CONSTRUCTION AND OPERATION IN GENERAL — WARRANTY DEED OF TIMBER. — For consideration the plaintiffs by warranty deed conveyed to the defendant, its heirs and assigns forever, all pine and cypress timber on certain land with the right to enter on the land for full turpentine and timber purposes. Thereafter for ten years the defendants removed no timber, whereupon the plaintiffs filed a bill in equity for cancelation of the deed as a cloud upon their title. *Held*, that a decree of cancelation will be granted. *McNair & Wade Land Co.* v. *Parker*, 59 So. 959 (Fla.).

It was early decided that a fee simple in timber may be conveyed by deed. *Barrington's Case*, 8 Co. 136 *b*; *Clap* v. *Draper*, 4 Mass. 266. But such an agreement is so unusual in nature and involves such serious consequences to the grantor, that no deed should be so construed, unless such is the manifest intention of the parties. See *McNair & Wade Land Co.* v. *Adams*, 54 Fla. 550, 555, 45 So. 492, 494; *Pease* v. *Gibson*, 6 Me. 81, 84. In the principal case there is no absolute grant of all timber forever growing upon the land. And the conveyance of the timber at present there is for specific uses, which require it to be cut and removed. Such a conveyance has been rightly decided not to pass an absolute fee. *Patterson* v. *Graham*, 164 Pa. St. 234, 30 Atl. 247; *McNair & Wade Land Co.* v. *Adams*, *supra*. Some courts hold that by a constructive severance the trees become the grantee's chattels, but his right of removal lapses within a reasonable time or such time as the deed specifies. *Zimmerman* v. *Daffin*, 149 Ala. 380, 42 So. 858; *Hoit* v. *Stratton Mills*, 54 N. H. 109. A better view, however, since not based on a fiction, holds that title passes subject, by an implied condition, to defeasance on failure of the grantee so to remove. *McRae* v. *Stilwell*, 111 Ga. 65, 36 S. E. 604. *Cf. Saltonstall* v. *Little*, 90 Pa. St. 422. On this view the principal case is correct.

DIVORCE — ALIMONY — MODIFICATION OF A DECREE WHICH ADOPTED AGREEMENT BETWEEN THE PARTIES. — In a suit for divorce *a vinculo*, a decree for permanent alimony incorporating an agreement between husband and wife was granted to the wife. On the wife's remarriage, the husband petitioned for a modification of the decree in accordance with the changed conditions of the parties. *Held*, that the decree should not be modified. *Emerson* v. *Emerson*, 45 Chic. Leg. N. 122 (Circ. Ct. of Baltimore City). See NOTES, p. 441.

EMINENT DOMAIN — COMPENSATION — EFFECT OF CHANGE OF USE. — The defendant's assignor by eminent domain proceedings acquired the right to flood the plaintiff's land for his grist mill. An electric-light plant was later substituted for the grist mill. The plaintiff seeks to enjoin the flooding of his land for the electric-light plant. *Held*, that the defendant may continue to flood the land on paying for the damage sustained by the operation of the electric-light plant over and above that which would be sustained by the operation of the grist mill. *Lucas* v. *Ashland Light Mill & Power Co.*, 138 N. W. 761 (Neb.). See NOTES, p. 439.

EMINENT DOMAIN — COMPENSATION — MORTGAGEE'S CLAIM ON FUND PAID INTO COURT. — Land held under a lease was taken by eminent domain proceedings, and the value of the lessee's interest was paid into court. The lessee had mortgaged his term and was also in arrears in rent. The lease contained a stipulation giving the lessor a right to enter for default in rent, but this right had not been exercised at the time the eminent domain proceed-